IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

**SHREE BABA RAMDEV VIKASH SAMITI, JODHPUR**

**VS.**

**SHRI SAINIK SHETRIYA MALI SAMAJ**

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S.B.CIVIL REVISION PETITION No.135/2007 UNDER SECTION 115 CPC READ WITH SECTION 151 CPC AGAINST ORDER DATED 5.4.2007 PASSED BY LEARNED ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION), JODHPUR IN CIVIL ORIGINAL SUIT NO.94/2007 WHEREBY THE APPLICATION UNDER ORDER 7 RULE 11 FILED BY THE PETITIONER DEFENDANT WAS REJECTED.

DATE OF ORDER : 18.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.S.P. Sharma for the petitioner.
Mr.Rajat Dave for the respondents.

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BY THE COURT:

REPORTABLE

Heard learned counsel for the parties.

The petitioner is aggrieved against the order of the trial court dated 5.4.07 by which the application filed by the petitioner defendant under Order 7 Rule 11 CPC was dismissed by the trial court.

Brief facts of the case are that the plaintiff respondent/trust filed a suit for permanent injunction in the trial court against the petitioner and non-petitioner No.2 to 5 defendants because of plaintiff's apprehension that the defendants may raise some construction in the trust property and may also interfere in the management of the trust. The plaintiff also applied for registration of the trust under Chapter 5 of the Rajasthan Public Trust Act, 1959 which is pending before the Assistant Commissioner, Devasthan Department.

The defendants submitted an application under Order 7 Rule 11 CPC before the trial court and prayed for rejection of the plaint of the plaintiff on the ground that in view of Section 29 of the Act of 1959, no suit to enforce a right on behalf of a public trust which is required to be registered under the Act of 1959 but has not been so registered shall be heard or decided in any court unless the trust is registered under the provisions of the Rajasthan Public Trust Act, 1959. It is admitted case of the defendants that the suit has been filed to enforce a right on behalf of a public trust and the plaintiff trust is not a registered trust under the Act of 1959,

therefore, from bare plain reading of the plaint, it is clear that the suit of the plaintiff is barred by Section 29 of the Act of 1959.

The petitioner defendant further submitted that the plaintiff has filed the suit with ulterior motive so that the plaintiff may get some findings in favour of the plaintiff on the questions which are required to be decided by the Assistant Commissioner, Devasthan under the Rajasthan Public Trust Act, 1959. It is submitted that in view of the relief claimed, the civil court cannot grant any relief to the plaintiff respondents.

The application under Order 7 Rule 11 CPC filed by the defendants was dismissed by the trial court vide order dated 5.4.07, hence this revision petition.

Learned counsel for the petitioner vehemently submitted that the suit of the plaintiff is liable to be rejected in view of the bar created by the law under Section 29 of the Act of 1959.

Learned counsel for the petitioner relied upon the judgment of this Court delivered in the case

of Megha Ram vs. Panchayat Samiti reported in 2006 (1) CDR 717(Raj.) wherein it has been held that when specific remedy is available under specific Act, then the remedy in general law is barred. That was a case under the Payment of Wages Act, 1936. Learned counsel for the petitioner also relied upon the judgment delivered in the case of Shyam Lal & Anr. vs. Shushil Ruiaya & ors. reported in RLW 2004(2) Raj.-837, wherein there was a election dispute under the provisions of the Co-operative Societies Act. Another judgment relied upon by learned counsel for the petitioner was delivered in the case of the Bank of Rajasthan vs. Manish Agarwal & anr. reported in 2000 WLC (Raj).UC-101, wherein this High Court held that the plaint can be rejected at any stage when it discloses no cause of action. Yet another judgment relied upon by learned counsel for the petitioner was delivered in the case of Saleem Bhai & ors. vs. State of Maharashtra & ors. reported in (2003) 1 SCC-557, wherein the Supreme Court held that the germane facts for deciding such an application under Order 7 Rule 11 CPC are the averments in the plaint and not the pleas taken in the written statement and the Supreme Court further held that the power under Order Rule 11 CPC can be exercised at any stage of the suit

before the conclusion of the trial.

Learned counsel for the respondents submitted that Section 29 nowhere bars institution of the suit by an unregistered trust to enforce the right of the trust. It only bars the hearing of the suit as well as restricts against the decision of the suit. It is also submitted that in identical facts and circumstances, this Court in the case of Madhopuri and ors. vs. Banshidhar & ors. reported in 1985 WLN(UC) -189 following earlier judgment of this Court in the case of Banshidhar vs. Hindu Anatha Ashram reported in 1976 WLN (UC) 237 took the same view as submitted by learned counsel for the respondents. It is also submitted that the defendants may have any defence against the suit but that defence cannot be looked into while deciding the application under Order 7 Rule 11 CPC. It is also submitted that the allegation of any ulterior motive in filing suit are absolutely false and deserves to be rejected.

I considered the submissions of the learned counsel for the parties and perused the judgments relied upon by learned counsel for the parties.

Sub-section (1) of Section 29 of the Act of 1959 is as under:

> (1)"No suit to enforce a right on behalf of a public trust which is required to be registered under this Act but has not been so registered shall be heard or decided in any court.

It is clear from the bare reading of sub-Section (1) of Section 29 of the Act of 1959 that there is a bar against hearing and deciding a suit if it is by a trust to enforce any right of the trust and the trust is not registered under the Rajasthan Public Trust Act. The words like "no suit shall lie" or "no suit can be instituted" to enforce a right on behalf of a public trust which is not registered have not been used in sub-Section (1) of Section 29 of the Act of 1959. "No suit can be instituted" or "no suit shall lie" are the words which could have been used by the Legislation under sub-Section (1) of Section 29 of the Act of 1959 as has been used in some other enactments, but has not been used in the Act of 1959. The bar under Section 29 is only against hearing of the suit as well as against the deciding the suit, if it has been filed by unregistered trust, therefore, a suit can be

instituted by the unregistered trust to enforce right on behalf an unregistered public trust, but the suit cannot be decreed unless the registration of the trust is obtained before the decision of the suit. The obvious reason may be that during process of getting the trust registered, there may be very many occasions which may compel the trust to file the suit for obtaining immediate and urgent relief from the Court to protect the trust and trust property and, therefore, the words “no suit shall lie” or “no suit can be instituted” have not been used in sub-Section (1) of Section 29 of the Act of 1959. When the suit can be instituted in court of law then the court may also pass any interim order, which is not hearing of the suit itself or amounts to deciding suit or any part of the suit. This will serve the purpose of enactment of Section 29 of the Act of Section 29 (1) of the Act of 1959 so that till trust is registered, the trust property may not be dealt with or destroyed. The view of this Court in the case of Banshidhar (supra) and Madhopuri (supra) also supports the view as taken above.

So far as the judgments relied upon by learned counsel for the petitioner are concerned, there cannot be any quarrel about the legal

propositions laid down in the above said judgments; like the plaint can be rejected at any stage of the suit under Order 7 Rule 11 CPC before conclusion of the trial as held by Supreme Court in the case of Shyam Lal & anr. vs. Shushil Ruiaya & ors, there cannot be any quarrel when a specific remedy is available under the specific Act, then the remedy in general law is barred in some situations and when plaint does not disclose any cause of action from the plaint allegation and the suit is found to be barred by any law then the plaint is liable to be rejected. Here in this case, it has been held that the institution of the suit is not barred, therefore, those judgments have no application to this case.

In view of the above reasons, I do not find any merit in the revision petition. The revision petition is dismissed. However, it is made clear that none of the observation mentioned in this order be construed to affect the merits of the case of either of the parties before the trial court.

(PRAKASH TATIA), J.

/ANIL/